

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

LB AMFUEL, LLC d/b/a  
AMERICAN FUEL CELL  
& COATED FABRIC CO.

Plaintiff,

v.

AERO PRECISION INDUSTRIES, LLC

Defendant.

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Civil Action No.: 1:22-cv-01301

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**PLAINTIFF’S COMPLAINT**

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LB Amfuel, LLC d/b/a American Fuel Cell & Coated Fabric Co. (“Amfuel”), files this *Original Complaint* against Aero Precision Industries, LLC (“Aero”), and for cause would show:

**SUMMARY OF ALLEGATIONS**

1. Aero breached its contracts with Amfuel. Aero agreed to purchase aircraft fuel cells from Amfuel via multiple purchase orders per agreed terms. Aero repudiated the contracts after Amfuel accepted the purchase orders, began the manufacturing process, and completed some of the fuel cells. Per the parties’ agreed terms, Aero is liable for Amfuel’s storage and inventory charges related to the repudiated fuel cells. Aero is additionally liable under the Commercial Code for damages caused by its repudiation.

**PARTIES**

2. LB Amfuel, LLC d/b/a American Fuel Cell & Coated Fabric Co. is an Arkansas limited liability company with its principal place of business located in Magnolia, Arkansas.

3. Aero Precision Industries, LLC is a Delaware limited liability company whose principal place of business is located in El Segundo, California. Aero can be served with process

in Delaware by serving its registered agent, The Corporation Trust Company at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. A summons is requested at this time. Service will be made by a private process server.

### **JURISDICTION AND VENUE**

4. This Court has diversity jurisdiction over this lawsuit because the amount in controversy exceeds \$75,000.00 and the parties, and their members, are understood to be citizens of different states.

5. Venue is proper in this Court as the parties consented to the “exclusive jurisdiction of the state or United States federal courts in or around Travis County, Texas” via a mandatory forum selection clause. *See Argyll Equities LLC v. Paolino*, 211 F. App'x 317, 318-19 (5th Cir. 2006) (agreement to exclusive jurisdiction limits case to that particular situs).

### **FACTUAL BACKGROUND**

6. Amfuel is a manufacturer of airplane fuel cells.

7. Aero is a distributor of aircraft parts.

### **THE DISTRIBUTION AGREEMENT**

8. On or about March 22, 2017, Amfuel and Aero entered into a Distribution, Repair, and Re-Sale Agreement (the “Agreement”). Ex. 1. The Agreement gave Aero the exclusive distribution rights for Amfuel’s “aircraft fuel cells for all military platforms” within certain geographic regions.

9. The fuel cells are made to order. Generally, under the agreement, Aero submits a purchase order to Amfuel for fuel cells to be delivered two to three years in the future. Once Aero submits a purchase order, Amfuel queues the fuel cells for manufacturing.

10. As part of the Agreement, the parties adopted a uniform set of terms under which Aero would submit purchase orders for fuel cells. Amfuel would then invoice Aero for the fuel

cells under the same terms. The parties expressly agreed that no other language on the forms exchanged by the parties would control.

11. Section III of the agreed terms provided that:

In the event of [Aero's] unacceptable delay in issuing shipping instructions or releases, [Aero] shall reimburse AMFUEL for all inventory expenses incurred by reason of such delay.

12. Section VI of the agreed terms provided that:

Cancellations will be effective only with the specific agreement of AMFUEL sales manager. Depending upon the circumstances of cancellation, a charge may be quoted for acceptance.

13. Section VIII of the agreed terms provided that:

Except for valid warranty returns, customer should not return without prior authorization from the appropriate sales department. Any unauthorized return shall be made at the Buyer's risk and expense, including storage charges for goods in a warehouse of [Amfuels'] choice.

#### **THE PURCHASE ORDERS**

14. On September 9, 2018, Aero submitted Purchase Order 29165 to Amfuel pursuant to the terms of the Agreement. Purchase Order 29165 provided for, in part, the purchase of Fuel Cell No. 47302-3.

15. On September 19, 2018, Aero submitted Purchase Order 30236 to Amfuel pursuant to the terms of the Agreement. Purchase Order 30236 provided for, in part, the purchase of Fuel Cell No. 47500-2.

16. Also in 2018, Aero submitted Purchase Order 31465 to Amfuel pursuant to the terms of the Agreement. Purchase Order 31465 provided for, in part, the purchase of Fuel Cell No. FCR64968.

17. Amfuel accepted Purchase Orders 30236, 31134, 29165, and 31465 (the "POs") and began the manufacturing process for the fuel cells to satisfy the orders.

**REPUDIATION**

18. On January 25, 2021, Aero contacted Amfuel and requested that delivery of some of the fuel cells on order be pushed out beyond their original delivery dates.

19. On January 29, 2021, Amfuel responded to Aero and indicated that it did not have the storage capacity to pushout the delivery dates of the fuel cells without upfront compensation.

20. On February 1, 2021, Aero responded that it would not accept delivery “for the next several months” and did not agree to provide upfront compensation.

21. Amfuel attempted to work with Aero to accommodate where possible and Aero continued to accept delivery of some of the ordered fuel cells.

22. However, on May 26, 2021, Aero repudiated the POs by submitting “Change Orders” attempting to cancel the purchase of certain fuel cells ordered through the POs. There was no agreement from Amfuel for the cancellation of these orders.

23. Aero has not accepted and repudiated the following part orders:

<b>PO</b>	<b>Part No.</b>	<b>Part Description</b>
31134	47303-1	Cell, Fuel, Fuselage, F-15£2
30236	47500-2	F-5f Forward Fuselage Fuel Cell
29165	47302-3	Cell, Fuel, Fuselage, F15£2
31465	FCR64968	Cell, Fuel, Pampa

**COUNT I**  
**BREACH OF CONTRACT**

24. Amfuel adopts by reference the allegations contained above, and incorporates the allegations as if fully set forth herein.

25. Amfuel accepted the POs.

26. Each PO constitutes a contract for the purchase of goods.

27. Aero repudiated the contract as to each PO by attempting to “cancel” its order for certain fuel cells requested in the POs without the agreement of Amfuel and/or refusing to take delivery and pay for all of the fuel cells requested in the POs.

28. Aero’s repudiation is a breach of the contracts formed by the acceptance of the POs.

29. Amfuel has been unable to, after reasonable efforts, to resell all of the repudiated fuel cells at a reasonable price.

30. Aero’s breaches caused damages to Amfuel in excess of \$75,000.00, including the difference in price of fuel cells that could be resold, price of unsold fuel cells, inventory and storage expenses, interest and fees, recertification costs, and all other damages recoverable pursuant the Commercial Code.

#### **ATTORNEYS’ FEES**

31. Amfuel is entitled to an award against Aero in the amount of its reasonable and necessary attorney’s fees, costs, and expenses incurred for asserting and prosecuting this lawsuit pursuant to Texas Civil Practice and Remedies Code Sections 38.001.

#### **CONDITIONS PRECEDENT**

32. All conditions precedent to Amfuel’s right to recovery have been performed, have occurred, and/or have been waived.

#### **PRAYER**

WHEREFORE, Amfuel prays that Aero be summonsed to appear and answer, and that, on final trial, Amfuel be granted judgment against Aero for which it may be entitled, including but not limited to:

- a. Actual damages;
- b. Prejudgment and post judgment interest;
- c. Court costs;

- d. Attorneys' fees; and
- e. For such other relief Amfuel is justly entitled.

Respectfully submitted,

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